

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WILLIAM WILEY

Plaintiff,

v.

Civil Action No. 5:10CV85
(STAMP)

DR. DAVID PROCTOR, TRISTAN TENNEY,
WEXFORD HEALTH SERVICES,
LANCE YARDLEY and ADRIAN HOKE,

Defendants.

MEMORANDUM OPINION AND ORDER
DENYING THE PLAINTIFF'S MOTION
TO ALTER OR AMEND JUDGMENT

I. Background

The pro se¹ plaintiff, William Wiley, filed a complaint in this Court against defendants Dr. David Proctor, Tristan Tenney, Wexford Health Services, Lance Yardley, and Adrian Hoke. The case was referred to United States Magistrate Judge John S. Kaull for initial review and recommendation. Magistrate Judge Kaull issued a report and recommendation, recommending that the plaintiff's claims against Wexford Health Services, Adrian Hoke, and Lance Yardley be dismissed with prejudice and that the plaintiff's claims against defendants Dr. David Proctor and Tristan Tenney proceed and that those defendants be served with a copy of a 21 day summons and the complaint through the United States Marshals Service. This

¹"Pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1341 (9th ed. 2009).

Court affirmed and adopted the magistrate judge's report and recommendation in its entirety. The plaintiff then filed this motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), arguing that this Court incorrectly concluded that Wexford Health Services was not a person within the meaning of 42 U.S.C. § 1983.

II. Standard of Review

The United States Court of Appeals for the Fourth Circuit has recognized three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Pacific Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). "[Federal] Rule [of Civil Procedure] 59(e) motions may not be used . . . to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance." Id. A Rule 59(e) motion may not be used to relitigate old matters and is an extraordinary remedy that should be used sparingly. Id. It is improper to use such a motion to ask the court to "rethink what the court has already thought through--rightly or wrongly." Above the Belt, Inc. v. Mel Bohannon Roofing, Inc., 99 F.R.D. 99, 101 (E.D. Va. 1983).

III. Discussion

In his motion to alter or amend judgment, the plaintiff argues that this Court used the incorrect standard in determining that defendant Wexford Health Services is not a "person" within the meaning of 42 U.S.C. § 1983. The plaintiff argues that Will v. Mich. Dept. of State Police, 491 U.S. 58, 71 (1989), and Roach v. Burch, 825 F. Supp. 116, 117 (N.D. W. Va. 1993), are not the controlling authority on the issue. This Court disagrees. Those cases hold that states and their officials are not "persons" under 42 U.S.C. § 1983 when acting in their official capacities and that jails are not "persons" under 42 U.S.C. § 1983. Wexford Medical Services, like a jail, is not a "person" for purposes of 42 U.S.C. § 1983. Accordingly, Wexford Medical Services was correctly dismissed as a defendant in this action. The plaintiff's motion to alter or amend judgment is DENIED.

IV. Conclusion

For the reasons stated above, this Court DENIES the plaintiff's motion for reconsideration.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the pro se plaintiff by certified mail.

DATED: November 2, 2010

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE